

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 92-105
The Use of N11 Codes and Other)	
Abbreviated Dialing Arrangements)	

COMMENTS OF THG CONSULTANTS LLP

THG Consultants LLP (THG) by its attorneys, herewith files its initial comments in response to the Commission's Notice of Proposed Rulemaking as published in the Federal Register on June 8, 2004, 69 Fed. Reg. 31930.

1. THG offers consulting services to communications companies and companies that use the services of such companies. It files these comments based on its first-hand experience with the impact the Commission's policy has on assigning N11 codes to entities that have broad public interest missions, such as the 211 code for information and referral services; 311 for non-emergency police or other government services; 511 for travel and information services; 711 for telephone relay services; and 911 for emergency services. THG's clients are commercial entities that have used N11 codes to provide information services to the public on a commercial basis. These clients have had to adjust their operations based on the Commission's policy of assigning the N11 codes they were using for the public purposes designated by the Commission.¹

¹ THG's clients have used 211 and 311 for their information services. When these were assigned for designated uses, alternative arrangements had to be found in order to continue to provide service. For the most part, alternatives were found, but

2. In this proceeding, the Commission asks for comments on the assignment of 811 or other abbreviated dialing code to provide a One Call notification system in compliance with the Pipeline Safety Improvement Act of 2002. Should the Commission decide to assign the 811 code for a One Call notification system it will affect current commercial uses of this N11 code. Some small business enterprises make use of the 811 code to provide information services to the public. There will, therefore, be a direct and palpable impact on these small businesses if the 811 code becomes the dialing arrangement for a national One Call notification system. In fact, one small business has already been adversely affected by the mere proposal to consider the 811 code as the dialing arrangement for a national One Call notification system.

3. Commission policy is that commercial use of these codes, even after being designated as a national dialing arrangement for specified uses, may continue to be used for commercial purposes until a qualified entity applies for and then actually develops the capability to put the code into use for the purposes for which it is assigned. In many cases, although assigned for designated uses, such codes are not activated for their designated use because of funding issues or lack of public need. In such cases, the N11 codes remain available for commercial use.²

4. In some cases, however, even though no proposal for activation of a designated code exists, some local exchange carriers (LECs) ignore the commercial

required the substitution of another undesignated N11 code, e.g., switching from the 311 code to the 811 code.

² Even when an N11 code is sought to be activated, the commercial user of that code has a six-month grace period to substitute other dialing arrangements, either another N11 code or some other arrangement.

user's right to continue to use the N11 code until a bona fide request for activation is made.³ More recently, a small business was refused the right to substitute the 811 code for the 211 code being used after a bona fide request for the use of the 211 code had been made. In this case, the incumbent LEC required the existing user to obtain approval from a state regulatory body to substitute the 811 code for the 211 code.⁴ The state agency refused to allow the substitution of the 811 code for the 211 code on the grounds that it was believed that the 811 code would be assigned for the One Call notification system. The denial of the use of 811 for 211 was taken prior to the Commission's issuance of its Notice in this Docket and, of course, before the 811 code is assigned for such a system.⁵

5. While the abbreviated dialing codes 211-911 are extremely scarce, there are other abbreviated dialing arrangements that are being used (including 411, 611 and 811 for repair services) by incumbent monopoly carriers, while star and pound sign vertical service codes are being used by wireless carriers, often owned by the incumbent LEC. The current situation in the administration and use of these codes raises several issues affecting the public interests in proper numbering administration under the Communications Act of 1934 (Act) and the interests of

³ See FCC File EB-02-TC-F-003. In this case, National A-1 Advertising, Inc., a small business information service provider was using N11 code 311. Although no qualified entity requested activation of the 311 code for its designated use in all the cities in which it was being used, the incumbent local exchange carrier threatened to discontinue service on the 311 code.

⁴ There is no requirement that state agencies approve the assignment of these codes and, indeed, any attempted exercise to administer these code assignments is in violation of the Commission's exclusive jurisdiction over telephone numbering.

⁵ See Notice of Informal Complaint, April 7, 2004, issued by the Commission's Consumer Inquiries & Complaint Division and Docket File No. 04-00062, Advisory and Petition in Reference of Reassignment of N11 Number Code, Tennessee Regulatory Authority, Order, March 22, 2004 and Order, April 12, 2004.

small businesses under the Regulatory Flexibility Act (RFA) that must be addressed in this proceeding.

6. When the original N11 codes are reassigned for national use, and the codes are being used by small businesses engaged in commercial activities, stripping the use of that code without a viable substitute from the small business entity causes severe economic injury to that business and also deprives the public of an existing service. These adverse consequences implicate the provisions of Section 214 of the Act that requires that application be made to the Commission for authority to discontinue service to the public. When the code is revoked and no viable substitute provided, not only does the information service provider using the code lose its service, but the information service being provided to the community that was served is also denied to that community.

7. In addition, if some other service is offered as a replacement for the lost N11 code, it is offered without the same terms and conditions that applied to the service using the N11 code. This renders the substitute non-viable. The refusal to offer the same or similar terms surrounding the use of a substitute dialing arrangement that make the substitute service non-viable raises issues of undue discrimination under Section 202 of the Act and unreasonable practices under Section 201 of the Act.

8. There is also an issue of warehousing these abbreviated dialing codes. When small businesses are denied access to abbreviated dialing arrangements, either by direct refusal or by pricing the service too high, but such codes are available for

incumbent LEC use or wireless carriers, issues of warehousing, in violation of Section 201, and of undue preferences, in violation of Section 202, are raised.

9. Small businesses can be unfairly disadvantaged by being denied equal access to abbreviated dialing arrangements, or by being priced out of the market for such access. It is the duty of the Commission under the RFA to address these issues, and enunciate proper policies and requirements so that its regulations do not unduly burden small businesses by excluding them from special access to dialing arrangements large companies are able to obtain.

10. It is expressly requested that the Commission, in considering the allocation of 811 or other abbreviated dialing arrangement for a One Call notification system, do so in a manner that is consistent with the public interest requirements of the Act and the special duties under the RFA. The Commission should reaffirm the right of commercial users to use any designated code until it is ready to be activated. The Commission should clarify that discontinuance of N11 service may not take place until an application for discontinuance authority is filed and granted under Section 214 of the Act. The Commission should require that, in such application for discontinuance, the service-terminating LEC demonstrate that it has arranged for the substitution of a viable alternative dialing arrangement that is similar in all material respects as to all surrounding terms and conditions (billing, treatment messages, etc.) that applied to the N11 service being discontinued. The Commission should reaffirm its exclusive jurisdiction over numbering administration and announce that states

may take no action in regard to these codes or at least none that is not consistent with Commission policy.

Respectfully submitted,

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